

Federal Deposit Insurance Corporation

§ 380.39

the claim filed by the claimant with the Corporation as receiver; or in documents submitted in the proof of the claim. If the claimant has filed the claim electronically, the receiver may notify the claimant of the determination by electronic means.

(b) *Contents of notice of disallowance.* If the Corporation as receiver disallows a claim, the notice to the claimant shall contain a statement of each reason for the disallowance, and the procedures required to file or continue an action in court.

(c) *Failure to notify deemed to be disallowance.* If the Corporation as receiver does not notify the claimant before the end of the 180-day claims determination period, or before the end of any extended claims determination period, the claim shall be deemed to be disallowed, and the claimant may file or continue an action in court pursuant to 12 U.S.C. 5390(a)(4)(A).

§ 380.38 Procedures for seeking judicial determination of disallowed claim.

(a) *In general.* In order to seek a judicial determination of a claim that has been disallowed, in whole or in part, by the Corporation as receiver, the claimant, pursuant to 12 U.S.C. 5390(a)(4)(A), may either:

(1) File suit on such claim in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located; or

(2) Continue an action commenced before the date of appointment of the receiver, in the court in which the action was pending.

(b) *Timing.* Pursuant to 12 U.S.C. 5390(a)(4)(B), a claimant who seeks a judicial determination of a claim disallowed by the Corporation as receiver must file suit on such claim before the end of the 60-day period beginning on the earlier of:

(1) The date of any notice of disallowance of such claim;

(2) The end of the 180-day claims determination period; or

(3) If the claims determination period was extended with respect to such claim under § 380.36(b), the end of such extended claims determination period.

(c) *Statute of limitations.* Pursuant to 12 U.S.C. 5390(a)(4)(C), if any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in 12 U.S.C. 5390(a)(4)(B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(d) *Jurisdiction.* Pursuant to 12 U.S.C. 5390(a)(9)(D), unless the claimant has first exhausted its administrative remedies by obtaining a determination from the receiver regarding a claim filed with the receiver, no court shall have jurisdiction over:

(1) Any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(2) Any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

§ 380.39 Contingent claims.

(a) The Corporation as receiver shall not disallow a claim based on an obligation of the covered financial company solely because the obligation is contingent. To the extent the obligation is contingent, the receiver shall estimate the value of the claim, as such value is measured based upon the likelihood that such contingent obligation would become fixed and the probable magnitude thereof.

(b) If the receiver repudiates a contingent obligation of a covered financial company consisting of a guarantee, letter of credit, loan commitment, or similar credit obligation, the actual direct compensatory damages for repudiation shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based

upon the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(c) The Corporation as receiver shall estimate the value of a claim under paragraphs (a) or (b) of this section no later than 180 days after the claim is filed, unless such period is extended by a written agreement between the claimant and the receiver.

(d) Except for a contingent claim that becomes absolute and fixed prior to the receiver's determination of the estimated value, such estimated value of a contingent claim shall be recognized as the allowed amount of the claim for purposes of distribution.

(e) The estimated value of a contingent claim shall constitute the receiver's determination of the claim for purposes of § 380.38(d) and 12 U.S.C. 5390(a)(9)(D).

§§ 380.40–380.49 [Reserved]

§ 380.50 Determination of secured claims.

(a) In the case of a claim against a covered financial company that is secured by any property of the covered financial company, the Corporation as receiver shall determine the amount of the claim, whether the claimant's security interest is legally enforceable and perfected, the priority of the claimant's security interest, and the fair market value of the property that is subject to the security interest. The Corporation as receiver may treat the portion of the claim which exceeds an amount equal to the fair market value of such property as an unsecured claim.

(b) The fair market value of any property of a covered financial company that secures a claim shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property and at the time of such proposed disposition or use.

(c) The Corporation as receiver may recover from any property of a covered financial company that secures a claim the reasonable and necessary costs and expenses of preserving or disposing of such property to the extent of any benefit to the claimant, including the payment of all ad valorem property taxes with respect to such property.

(d) To the extent that a claim is secured by property of a covered financial company and the value of such property, after any recovery under paragraph (c) of this section, is greater than the amount of such claim, there shall be allowed to the claimant a secured claim for interest on such claim and any reasonable fees, costs, or charges provided for under the agreement or State statute under which the claim arose to the extent of the value of such property.

§ 380.51 Consent to certain actions.

(a) *In general.* Any claimant alleging a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver may seek the consent of the receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C).

(b) *Contents of request.* A request for consent of the Corporation as receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) shall be in writing and contain the following information:

(1) The amount of the claim, with supporting documentation;

(2) A description of the property that secures the claim, with supporting documentation of the claimant's interest in the property;

(3) The value of the property, as established by an appraisal or other supporting documentation; and

(4) The proposed disposition of the property by the claimant, including the expected date of such disposition.

(c) *Determination by receiver.* The Corporation as receiver shall grant its consent to a request for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) if it determines that the claimant has a legally valid and enforceable or perfected security interest or other lien against the property of a covered financial company and the receiver will not use, sell, or lease the property. If the Corporation as receiver determines that it will use, sell, or lease such property and that adequate protection is necessary and appropriate, the receiver